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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 WILLIAM CURRY JR,

12 Petitioner,

Case No. 17-5314-RBL-JRC

13 v.

**ORDER TO AMEND HABEAS
PETITION**

14 ATTORNEY GENERAL et al.,

Respondents.

15 Petitioner, proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28
16 U.S.C. § 2254. Dkt. 4. The filing is defective because petitioner has not presented his federal
17 habeas claims on the Court's form for § 2254 habeas petitions, it is directed to the wrong
18 respondent, and petitioner has not properly identified his claims or indicated the procedural
19 history relating to his claims. Petitioner also attempts to include claims challenging the
20 conditions of his confinement. The Court provides petitioner leave to file an amended petition by
21 June 24, 2017 to cure the deficiencies identified herein.

22 1. Improper Habeas Claims

23 An "action lying at the core of habeas corpus is one that goes directly to the

1 constitutionality of the prisoner's physical confinement itself and seeks either immediate release
2 from that confinement or the shortening of its duration. With regard to such actions, habeas
3 corpus is now considered the prisoner's exclusive remedy." *Preiser v. Rodriguez*, 411 U.S. 475,
4 503 (1973) (internal quotation omitted). "A civil rights action, in contrast, is the proper method
5 of challenging conditions of confinement." *Badea v. Cox*, 931 F.3d 573, 574 (9th Cir. 1991); *see*
6 *also Bivens v Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

7 Here, petitioner challenges both the fact or duration of his confinement and his conditions
8 of confinement. The claims challenging the fact or duration of his confinement may be
9 considered as part of this habeas petition, but the claims challenging his conditions of
10 confinement can only be considered in a separate § 1983 civil rights complaint. Petitioner
11 challenges the fact and duration of his confinement by alleging that he is wrongfully confined as
12 a sexually violent predator based on a fraudulent mental health diagnosis. Dkt. 4 at 1, 53. Petitioner
13 contends that the state court failed to investigate his mental disorder. Dkt. 4 at 6. Petitioner
14 contends that the state court refused to dismiss the fraudulent probable cause warrant, failed to
15 disclose evidence, and denied his request for a *Frye* hearing. *Id.* at 9, 11, 12. Petitioner contends
16 that the prosecution engaged in misconduct by providing erroneous instructions and speculative
17 evidence. *Id.* at 14. Petitioner also contends he received ineffective assistance of counsel. Dkt. 4 at
18 18.

19 Petitioner challenges his conditions of his confinement by alleging that his Eighth
20 Amendment right to be free of cruel and unusual punishment was violated when petitioner was
21 illegally detained. Dkt. 4 at 18. Petitioner also contends that his equal protection rights were
22 violated because he has been treated differently than others who are confined in Washington
23 state. *Id.* Petitioner's Eighth Amendment and equal protection claims do not challenge the fact or

1 duration of his custody and cannot form the basis of habeas relief. These claims must be brought
2 in a §1983 civil rights complaint. *See Alcala v. Rios*, 434 Fed. Appx. 668, 669-70 (9th Cir. 2011)
3 (finding claims challenging the conditions of confinement were not cognizable as a federal
4 habeas petition and should be brought as a civil rights action). Petitioner may file a separate civil
5 cause of action raising his § 1983 claims.

6 2. Amended Habeas Petition

7 If petitioner wishes to proceed on his claims challenging the fact or duration of his
8 custody under § 2254, he must file an amended petition containing only claims challenging the
9 fact or duration of his detention.

10 First, under Rule 2(a) of the Rules Governing Section 2254 Cases, “the petition must name
11 as respondent the state officer who has custody.” Here, petitioner names Brian Judd, the SCC, the
12 Attorney General’s Office and the Department of Social and Health Services as respondents.
13 Dkt. 4. The proper respondent to a habeas petition is the “person who has custody over [the
14 petitioner].” 28 U.S.C. § 2242; see also § 2243; *Brittingham v. United States*, 982 F.2d 378 (9th
15 Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). According to his petition,
16 petitioner is currently confined at the SCC. The CEO of the SCC is William Van Hook, and
17 therefore, Mr. Van Hook is the appropriate respondent.

18 Further, the petition must:

- 19 (1) specify all the grounds for relief available to the petitioner; (2)
20 state the facts supporting each ground; (3) state the relief requested;
21 (4) be printed, typewritten, or legibly handwritten; and (5) be signed
under penalty of perjury by the petitioner or person authorized to sign
it for the petitioner under 28 U.S.C. §2242.

22 *Id.* at Rule 2(c). The petition must “substantially follow” a form prescribed by the local district
23 court or the form attached to the Rules Governing Section 2254 Cases. *Id.* at Rule 2(d).

1 Based on petitioner's filing, the Court is unable to determine whether petitioner properly
2 exhausted the remedies available in the Washington state courts. Petitioner is advised that he
3 may pursue federal habeas relief only *after* he has exhausted his state judicial remedies. *See*
4 *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). The exhaustion of state court remedies is a
5 prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A
6 petitioner can satisfy the exhaustion requirement by providing the highest state court with a full
7 and fair opportunity to consider all claims before presenting them to the federal court. *Picard v.*
8 *Connor*, 404 U.S. 270, 276 (1971); *Middleton v. Cupp*, 768 F.2d 1083, 1086 (9th Cir. 1985).

9 Moreover, the Court cannot determine whether the petition has been timely filed in this
10 Court. 28 U.S.C. § 2244(d)(1)(A) requires a prisoner to file a habeas petition within one year of
11 "the date on which the [state court] judgment [of conviction] became final by the conclusion of
12 direct review or the expiration of the time for seeking such review[.]"

13 CONCLUSION

14 If petitioner intends to pursue this habeas action, he must file an amended petition
15 complying with Rule 2 of the Rules Governing Section 2254 Cases on the form provided by the
16 Court. Petitioner must include only claims challenging the fact or duration of his custody. The
17 amended petition must also be legibly rewritten or retyped in its entirety, it should be an original
18 and not a copy, it should contain the same case number, and it may not incorporate any part of the
19 original petition by reference. The amended petition will act as a complete substitute for the
20 original petition, and not as a supplement.

21 If petitioner fails to adequately address the issues raised herein and file an amended petition
22 on or before June 24, 2017, the undersigned will recommend dismissal of this action. The Clerk is
23 directed to provide petitioner with the forms for filing a petition for habeas corpus relief pursuant

1 to 28 U.S.C. § 2254 and forms for filing a civil rights complaint. The Clerk is further directed to
2 provide copies of this Order to petitioner.

3 Dated this 24th day of May, 2017.

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6 J. Richard Creatura
7 United States Magistrate Judge
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